



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 5, 1959

Mr. Joe D. Carter
Executive Secretary
Texas Water Development Board
Austin 1, Texas

Opinion No. WW-618

Re: Authority of Texas
Water Development
Board to loan money
to the Lower Nueces
River Water Supply
District.

Dear Mr. Carter:

You have requested an opinion of the Attorney General relative the authority of the Texas Water Development Board to loan \$3,000,000.00 to the Lower Nueces River Water Supply District, hereinafter called "District".

Presently the District is constructing the Seale Dam and Reservoir on the Nueces River, some 36 miles Northwest of Corpus Christi, for the purpose of supplying that city and the surrounding area with water for municipal, industrial and irrigation use. The initial cost estimate on this project was \$15,500,000.00.

The estimated cost to completion is now \$21,219,173.03. The difference represents increased construction cost occasioned by delay and increased land costs due to the discovery of four oil fields in the proposed reservoir basin.

Your question follows:

"In view of the fact that approximately \$18,000,000 had been expended prior to the filing of the Notice of Intention without any participation by the Texas Water Development Board in the financing thereof, can the Texas Water Development Board now lawfully lend all of the funds necessary to completion of the project so long as

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such sum does not exceed one-third of the overall total project cost or \$5,000,000, whichever is the lesser?"

We believe so, for you advise that the District seeks the loan to acquire land in the reservoir basin, and that —

"These reservoir lands are an integral part of the project and absolutely necessary for the storage of water and the consequent operation of the entire project. Without such lands, the project can not properly function and could not be considered complete."

The District was created by Acts 1949, 51st Legislature, Ch. 159, p. 326 (Art. 8280-134) V.C.S., under and pursuant to the provisions of Section 59, Article XVI, Constitution of Texas. It has been judicially determined that the District is a legally constituted political subdivision with the power to acquire lands for dam and reservoir purposes by condemnation or otherwise. Lower Nueces River Supply District v. Cartwright, 274 S.W.2d 199 (Civ.App. 1954 ref. n.r.e.).

Section 49-c, of Article III, Constitution of Texas, created the Texas Water Development Board and sets up the Texas Water Development Fund and declares that the Fund shall be used for furtherance of the conservation and development of the State's water resources by, among others,

"the acquisition of reservoirs and other storage projects . . ."

and directs that —

"Such fund shall be used only for the purpose of aiding or making funds available upon such terms and conditions as the Legislature may prescribe, to the various political subdivisions or bodies politic and corporate . . ."

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In Article 8280-9, V.C.S., the Legislature has prescribed the terms and conditions for access to the Fund. Section 11 thereof reads, in part:

" . . . the Texas Water Development Fund shall be used by the Board hereof for the purpose of providing financial assistance and aid to the various political subdivisions . . . in the conservation and development of the water resources of the State of Texas by the construction, acquisition or improvement of projects, as defined in Section 2 hereof."

Section 2, sub-section (f):

" 'Project' means any engineering undertaking or work for the purpose of the conservation and development of the surface water resources of the State of Texas, including the control, storing and preservation of its storm and flood waters and the waters of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension or construction of dams, reservoirs and other water storage projects . . ."

It is apparent that the Seale Dam and Reservoir is a project within the legislative definition, and, further, that the acquisition of reservoir lands is a basic, fundamental and inseparable part of that certain undertaking, and, consequently, could not be deemed a separate work containing within itself all the necessary elements of a water conservation project.

The constitutional and statutory provisions do not expressly specify that in order to qualify thereunder for financial assistance a project must either be or not be in a particular state of initiation, progression or completion, nor is any implied therein applicable to this fact situation.

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Section 15 of Article 8280-9, V.C.S., imposes a restriction upon the Board and the Fund:

"The Board shall never purchase bonds or other securities of a political subdivision in excess of one-third (1/3) of the total costs of a project for which assistance from the Fund is sought nor in excess of Five Million Dollars (\$5,000,000), whichever is the lesser for any one (1) project."

Consequently, you are advised that it is the opinion of the Attorney General that the Texas Water Development Board may lend all the funds necessary to the completion of the Seale Dam and Reservoir by the acquisition of reservoir lands provided the total of such aid does not exceed the limits announced in Section 15 of Article 8280-9, V.C.S., and the Board and the District comply with all other conditions precedent to the grant and the receipt of such financial assistance.

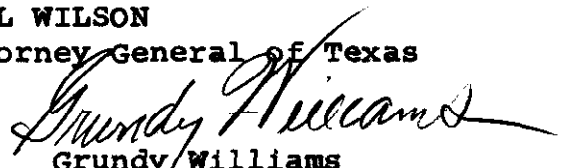
SUMMARY

The Texas Water Development Board may lend all the funds necessary to the completion of the Seale Dam and Reservoir by the acquisition of reservoir lands provided the total of such aid does not exceed the limits announced in Section 15 of Article 8280-9, V.C.S., and the Board and the District comply with all other conditions precedent to the grant and the receipt of such financial assistance.

Very truly yours,

WILL WILSON
Attorney General of Texas

By


Grundy Williams
Assistant

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APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

By: W. V. Geppert